

§ 400.707

prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

(j) After written notice of intent to disapprove all or part of a submission has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provided such notice, if the submission will be modified. Except as provided in paragraph (j)(3) of this section, the applicant must also include an anticipated date that the modification will be provided to the Board. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the submission is disapproved.

(1) If the modification is in direct response to reviewer comments, the Board may act on the modification immediately or seek further review within the 30-day time period allowed.

(2) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board agree to a time delay. If a time delay is agreed upon, the time period during which the Board must act on the modified submission will not be in effect during the delay.

(3) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) Modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed upon to allow for such review.

(k) A submission will be disapproved if the applicant does not present a modification of the submission to the Board on the date the applicant anticipated presenting the modification or does not request an additional time delay.

(l) If the Board fails to take action on a new submission within the prescribed

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90-day period in paragraph (g) of this section, or within the time period in accordance with paragraph (e)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

[70 FR 44238, Aug. 2, 2005]

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.

(c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with § 400.706(b).

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44239, Aug. 2, 2005]

§ 400.708 Approved submission.

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:

(1) If FCIC requires, an agreement between the applicant and FCIC that specifies:

(i) The responsibilities of each with respect to the implementation, delivery and oversight of the submission; and

(ii) That the property rights to the submission automatically transfers to FCIC if the applicant elects not to maintain the submission and FCIC has paid any amounts under § 400.712.

(2) A reinsurance agreement if terms and conditions differ from the available existing reinsurance agreements.

(b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance

and subsidy terms and conditions as received by the applicant.

(c) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44239, Aug. 2, 2005]

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial documents, are submitted to FCIC in the form approved by the Board;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold, unless FCIC assumes maintenance of the product;

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) Annually reviewing the policy's performance and providing a report on the policy's performance to the Board by each anniversary date of when the product was first available to be purchased by the public;

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy of plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC. The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider or any other person will have a right of action against the applicant; and

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been withdrawn by the applicant in accordance with paragraph (a)(4) of this section is deemed canceled and applications deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its website at www.rma.usda.gov; and

(i) Approved insurance providers will be notified in writing by FCIC that the policy, plan of insurance, or premium rates have been withdrawn; and

(ii) Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in the area by the sales closing date for such policy or plan of insurance; and

(6) Failure of the applicant to perform the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.